

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK ANTHONY JONES,)	No. C 13-1976 JSW (PR)
)	
Petitioner,)	ORDER OF DISMISSAL; GRANTING
)	LEAVE TO PROCEED IN FORMA
vs.)	PAUPERIS
)	
CONNIE GIPSON, Warden,)	
)	
Respondent.)	
)	(Docket No. 3, 4)

Petitioner, a prisoner of the State of California proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of a judgment of conviction from Sonoma County Superior Court 2004. Petitioner has previously filed a habeas petition in this Court challenging the same judgment, which petition was denied on its merits. *See Jones v. Adams*, No. C 06-4162 VRW (PR). A second or successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). Petitioner has not sought or obtained such an order from the Ninth Circuit.

Petitioner argues that he may proceed without authorization from the Ninth Circuit because the instant petition challenges his “resentence” following remand from the California Court of Appeal. After his initial sentence, the California Court of Appeal remanded for re-sentencing, and Petitioner was given a new sentence in 2004. It may be that a federal petition is not successive under Section 2244(b) when it challenges a new

1 sentence or judgment that was issued the first federal petition, in which the petitioner had
2 only challenged the underlying conviction. Here, however, Petitioner's first federal
3 habeas petition challenged the validity of the sentence he received in 2004 after remand.
4 His attempt to challenge that sentence again with new claims in the instant petition is
5 successive within the meaning of Section 2244(b), and therefore he may not proceed
6 until he obtains authorization from the United States Court of Appeals.


7 Accordingly, the petition is DISMISSED without prejudice to refile if Petitioner
8 obtains the necessary order from the United States Court of Appeals.

9 Petitioner's requests to proceed in forma pauperis are GRANTED (dkt. 3, 4).

10 The Clerk shall enter judgment and close the file.

11 IT IS SO ORDERED.

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13 DATED: July 1, 2013

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16 JEFFREY S. WHITE
17 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARK JONES,

Plaintiff,

v.

CONNIE GIPSON et al,

Defendant.

Case Number: CV13-01976 JSW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 1, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mark Anthony Jones
P.O. Box 3466
C12452
Corcoran, CA 93212-3466

Dated: July 1, 2013



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk